

## How to File an Answer in the Justice Court

Use the attached forms if you want to answer a complaint filed against you in the Justice Court. Read the directions for the forms carefully.

### LEGAL ADVICE

The clerk of the justice court can not give you legal advice. If you need legal advice contact an attorney.

### FEES

You must pay the clerk of the justice court a fee for filing and surcharges. The defendant's fees in justice court total \$20. The fee must be paid by each defendant.

### REPRESENTATION

You may file an answer individually or through an attorney. If you are filing for a corporation, partnership, or other entity, the answer must be filed through an attorney. Read the handout entitled "Representation in Justice Court" provided in this packet.

### ANSWER

1. An answer is the means by which the defendant contests plaintiff's claim. The answer must contain a denial of any or all the allegations in the complaint. Rule 7B, Justice and City Court Civil Rules
2. Each answer should contain all defenses raised by the defendant and any counterclaim or setoff against the plaintiff.
3. Each defendant shall file an answer with the clerk of the justice court within 20 days after service of the summons upon the defendant. A copy of the answer must be served upon the plaintiff. Rule 7B, Justice and City Court Civil Rules

### DEFAULT JUDGMENT

When a defendant fails to file an answer to the complaint a default must be entered against the defendant upon motion of the plaintiff. When a default has been entered against the defendant for failure to answer the court will enter a default judgment against the defendant for the amount or relief asked for in the complaint. There is no appeal from a default judgment except on questions of law or abuse of discretion in setting aside or refusing to set aside a default or judgment. §25-33-303

### COUNTERCLAIM

1. A counterclaim is a claim presented by the defendant in opposition to or deduction from the claim of the plaintiff. The counterclaim must arise out of the same transaction or occurrence as the complaint. Rule 7C, Justice and City Court Civil Rules.
  - a. Failure to file a counterclaim that arises out of the same transaction or occurrence, and within the justice court jurisdiction, is deemed a waiver of the counterclaim.
  - b. If a counterclaim is filed the plaintiff must file a reply within 20 days after service of the counterclaim upon the plaintiff. Rule 7D, Justice and City Court Civil Rules.
  - c. Upon plaintiff's failure to reply to the counterclaim, the defendant may request entry of default and judgment on the counterclaim.

2. A counterclaim that exceeds seven thousand (\$7,000) dollars must be amended to conform to the court's jurisdiction or it shall be dismissed without prejudice. If the counterclaim is dismissed, the court proceeds as if none had been filed. A counterclaim that exceeds the court's jurisdiction may be filed in the district court and the justice court action transferred to the district court.

### CROSS CLAIMS AND THIRD-PARTY COMPLAINTS

Cross claims and third-party complaints arise out of a transaction or occurrence outside of the plaintiff's cause of action. Cross Claims and Third-Party Complaints are not allowed in justice court. Rule 7E, Justice and City Court Civil Rules.

### APPEAL

A judgment may be appealed by any party to the district court within 30 days after entry of judgment. A notice of appeal must be filed with the justice court and a copy sent to the opposing party. The judgment is stayed when the appeal fee is paid and the appeal bond is posted. Failure to file the appeal bond equal to the judgment and costs, or deposit money equal to the judgment and costs, within 10 days of filing the notice of appeal shall result in the dismissal of the appeal. The appeal bond, or money deposit, of a prevailing party is \$100 and costs.

## INSTRUCTIONS FOR COMPLETING FORMS

### Answer and Counterclaim

Please print neatly. If your forms are not legible or incomplete the clerk of the justice court will not accept them for filing.

Line entries must be completed before the form is filed with the justice court. Please read the instruction for the line entry of each form. Fill in the correct information for each entry as indicated below.

#### Line Entries for Answer and Counterclaim

- [1] Print the name, address and telephone number of the party who is suing on the lines provided. This person is called the plaintiff.
- [2] Print the name, address and telephone number of the party who is being sued on the lines provided. This person is called the defendant. If the defendant is a corporation, partnership, company, or association the answer and counterclaim must be filed through an attorney. Read the handout entitled "Representation in Justice Court". If you are under the age of 18 you will need a guardian ad litem appointed before you can proceed with your case.

#### Line Entries for Answer

- [3] Check the box which best describes the defendant, i.e. "an individual over age 18", "an individual under age 18", "a partnership", or "a corporation". If you are doing business as a sole proprietor check the sole proprietor box and print in the name and address of the business if it is different from the name and address in item 2.

- [4] Read. The entry generally denies the claim of the plaintiff(s).
- [5] Explain why you believe any or all the facts in the complaint to be untrue or provide facts constituting a defense to plaintiff(s) complaint. For example, the amount asked for was paid or should be offset by amounts owed to you by plaintiff(s). An allegation not denied is deemed admitted.
- [6] Date and sign your name.
- [7] You must send a copy of the answer to all plaintiffs. Enter the date you sent a copy of the answer to the plaintiff(s), sign the certificate of mailing and file the answer with the clerk of the justice court.

#### Line Entries for Counterclaim

- [3] Read. The counterclaim must arise out of the same transaction or occurrence as the complaint.
- [4] Explain the reason for the counterclaim. Attach additional sheet if needed.
- [5] Enter the amount of money or damages you are seeking. Note the \$7,000 limitation on claims.
- [6] Enter the amount of money or damages you are seeking.
- [7] Date and sign your name.
- [8] You must send a copy of the counterclaim to all plaintiffs. Enter the date you sent a copy of the counterclaim to the plaintiff(s), sign the certificate of mailing and file the counterclaim with the clerk of the justice court.

### What happens next?

- Each defendant must pay a court fee of \$20.00
- You must serve on the plaintiff(s) a copy of the answer and counterclaim.
- You may request the clerk of court to enter a default against the plaintiff(s) if a reply to the counterclaim is not filed within 20 days of service.
- You must attend the trial. The hearing date, time, and location will be set after the answer to the complaint and reply to the counterclaim has been filed. Be sure to bring along any witnesses, books, papers, or other evidence which will help you prove your defense or counterclaim to the court.
- You must pay a \$10.00 judgment fee on a judgments rendered in your favor after a trial. There is no judgment fee for a default judgment.
- If you appeal the judgment you must pay a fee of \$10 upon filing the notice of appeal. Failure to file the appeal bond equal to the judgment and costs, or deposit money equal to the judgment and costs, within 10 days of filing the notice of appeal shall result in the dismissal of the appeal.

IN THE JUSTICE COURT, YELLOWSTONE COUNTY, STATE OF MONTANA

**REPRESENTATION IN JUSTICE COURT**

**UNIFORM JUSTICE & CITY COURT RULES**

**RULE 14. REPRESENTATION**

- (a) A party may represent oneself, or be represented by counsel.
- (b) No representation can be made on behalf of a party by another person except an attorney duly licensed by the State of Montana. A nonresident attorney may be permitted to represent a party upon motion of a licensed resident attorney as provided for under Section 37-61-208, MCA.
- (c) Death or removal of an attorney shall be governed by Rule 10 of the Uniform District Court Rules.

**MONTANA JUSTICE AND CITY COURT RULES OF CIVIL PROCEDURE**

**RULE 2 (a) COMMENCEMENT OF ACTION**

- (a) A civil action is begun by filing a complaint with the justice or city court. a concise written statement of the cause of action is considered a complaint. **A person as defined in Rule 4 (A) (1) may file individually or through an attorney. All others, as defined in Rules 4 (A) 2, 3, 4 and 5, must file through an attorney.** The individual or the attorney must sign the complaint. Other requirements for the complaint are set out in Rule 7.

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**RULE 4 (A) (1)  
PERSON**

- (1) an individual, whether operating in the individual's own name or under a trade name;

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**RULE 4 (A) 2, 3, 4 & 5  
ALL OTHERS**

- (2) an individual's agent or personal representative;
- (3) a corporation, business trust, estate, trust, partnership, or limited liability company;
- (4) any two or more persons having a joint or common interest; and
- (5) any other legal or commercial entity.

**QUESTIONS CONCERNING NON-LAWYER ACTIONS IN JUSTICE COURT**

**CAN I FILE A COMPLAINT AND REPRESENT MYSELF IN JUSTICE COURT WITHOUT AN ATTORNEY?**

**YES. Except as provided below.** Rule 14, U.J.C.C.R. and Rule 2, M.J.C.C.R.Civ.P. state that an individual may represent him or herself or use an attorney. You may prepare and file your own complaint. A business or corporation may require an attorney, read the questions below.

**CAN I AS A SOLE PROPRIETOR OF AN UNINCORPORATED BUSINESS FILE A COMPLAINT AND REPRESENT MYSELF AND BUSINESS IN JUSTICE COURT?**

**YES.** You would file your action as John Doe doing business as XYZ. However if your business is a corporation you will need an attorney.

**I AM AN OFFICER OF A CORPORATION; CAN I FILE A COMPLAINT AND REPRESENT THE CORPORATION WITHOUT AN ATTORNEY?**

**NO. YOU NEED AN ATTORNEY.** A corporate officer who is not an attorney can not appear on behalf of a corporation. A corporation is a separate legal entity and cannot appear on its own behalf through an agent other than an attorney. *Audit Services-West* (1992), 251 Mont. 142, 827 P. 2d 1242; *Traders State Bank of Poplar v. Mann* (1993), 258 Mont. 226, 234, 852 P. 2d 604 ; *Weaver v. Law Firm of Graybill et al.* (1990) 246 Mont.. 175, 803 P. 2d 1089 and *Continental Realty v. Gerry* (1991), 251 Mont. 150, 822 P. 2d 1083.

**CAN I GIVE A FRIEND OR RELATIVE WHO IS NOT A LICENSED ATTORNEY A POWER OF ATTORNEY TO REPRESENT ME IN JUSTICE COURT?**

**NO. YOU NEED AN ATTORNEY.** Rule 14 of the Montana Uniform Rules for the Justice and City Courts prohibit lay persons from practicing law in justice courts. The Montana Supreme Court has confirmed that lay persons are prohibited from representing other persons in justice courts. *Sparks v. Johnson* (1992), 252 Mont.. 39, 44, 826 P. 928, 931 and *O'Neil and Fahrner v. Stadler* (April 8, 1997), Supreme Court Cause No. 97-111.

**I MANAGE RENTAL PROPERTY OR APARTMENTS, AS AN AGENT OF THE OWNER CAN I FILE A COMPLAINT AND REPRESENT THE OWNER WITHOUT AN ATTORNEY?**

**NO. YOU NEED AN ATTORNEY.** As a non-lawyer you may not represent others in Justice Court. Rule 14 of the Montana Uniform Rules for the Justice and City Courts prohibit lay persons from practicing law in justice courts. The Montana Supreme Court has confirmed that lay persons are prohibited from representing other persons in justice courts. *Sparks v. Johnson* (1992), 252 Mont.. 39, 44, 826 P. 928, 931; *O'Neil and Fahrner v. Stadler* (April 8, 1997), Supreme Court Cause No. 97-111; *Weaver v. Law Firm of Graybill et al.* (1990) 246 Mont.. 175, 803 P. 2d 1089 and *Continental Realty v. Gerry* (1991), 251 Mont. 150, 822 P. 2d 1083.

**NOTE: UNDER THE RULES ONLY INDIVIDUALS MAY REPRESENT THEMSELVES. ALL OTHERS - AGENTS, PERSONAL REPRESENTATIVES, CORPORATIONS, PARTNERSHIPS, JOINT VENTURES, AND OTHER LEGAL ENTITIES MUST FILE THROUGH AN ATTORNEY.**